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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 125th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 November 1992, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.125/Add.1 and the summary record of the third part (public) of the meeting appears as document CAT/SR.125/Add.2.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

First supplementary report of Ukraine (CAT/C/17/Add.4)

1. At the invitation of the Chairman, Mr. Burtshak and Mr. Reva (Ukraine) took places at the Committee table

2. Mr. BURTSHAK (Ukraine) reaffirming his country's desire fully to cooperate with the Committee, said that, since the submission of its initial report (CAT/C/5/Add.20, dated 30 January 1990), it had endeavoured to comply with the provisions and requirements of the Convention against Torture and to provide satisfactory answers to the questions raised by the members of the Committee.

3. With regard to the primacy of international law in national law, he recalled that the Act on the validity of international agreements in Ukrainian territory had been promulgated on 10 December 1991. It stated that international agreements concluded and ratified by Ukraine formed an integral part of national law and were applied in accordance with the procedures laid down for provisions of national law.

4. In connection with work on updating the law, considerable attention was also being given to reducing the number of offences punishable by the death penalty. Capital punishment was thus applicable only in cases of premeditated murder with aggravating circumstances and for several particularly serious crimes, such as violence against Ukrainian Government officials or foreign political personalities and activities designed to undermine the country's institutions if they involved abduction or murder. Since consideration of its initial report, Ukraine had also ratified the Optional Protocol to the International Covenant on Civil and Political Rights.

5. In order fully to understand the process taking place in Ukraine, it should be remembered that independence had been proclaimed on 24 August 1991 and that one of the most important elements of internal policy had been the establishment of a State subject to the rule of law. It had therefore had to be decided which laws of the former Soviet Union would remain in force and how Ukraine would fulfil its obligations under the international treaties and covenants which the Soviet Government had ratified. The decision adopted had been that all the laws in force under the previous regime would be maintained if they were compatible with the new Constitution of Ukraine which was being drafted. The reform of the country's legislative system would thus mean harmonizing new and old texts, on the one hand, and national and international legislation, on the other.

6. During the consideration of the initial report of Ukraine, the members of the Committee had emphasized that national legislation should include a definition of torture and rules designed specifically to prevent and punish any act of torture. That would be done in the new codes which were being prepared, including the Penal Code, the Code of Criminal Procedure and the Code for the Enforcement of Sentences.

7. It was also necessary to guarantee the separation of powers and the independence of the judiciary. The new Penal Code provided for penalties for attempts to undermine the independence of the courts and for contempt of court. Conditions of detention also had to be made more humane and, to that end, the Cabinet of Ministers of Ukraine had approved a programme to bring conditions of detention into line with international standards. He drew the Committee's attention to the fact that the Supreme Soviet of Ukraine had adopted more than 120 new laws which related primarily to the country's economy, since there were so many urgent problems that had to be solved in that regard. That was why the reform of the judiciary had still not been completed.

8. In view of the importance of the machinery for enforcing the laws, the new Supreme Soviet of Ukraine had set up three Commissions. The first one dealt with legislative activities, the second with questions of public order and the third was a human rights commission which considered complaints submitted to it. The authorities also planned to set up a new human rights institute which would be responsible for monitoring the implementation of the relevant legislation.

9. As things now stood, the country's judicial bodies included: general courts, economic courts and the Constitutional Court, which was responsible for ensuring that legislative acts were in keeping with the Constitution and legislation on human rights violations. The decisions taken by the Constitutional Court entered into force automatically. The possibility of setting up special courts to settle the most complex issues brought before the OConstitutional Court was still under discussion. Whatever the outcome, the Government was actively working on the democratization and modernization of the Ukrainian legal system.

10. Mr. KHITRIN (Country Rapporteur) recalled that, during the consideration of the initial report of Ukraine, the Committee had concluded that the country's legal system needed to be improved. Since then, Ukraine had proclaimed its independence and the establishment of a State subject to the rule of law was one of the Government's primary concerns. New types of offences, such as racketeering and organized crime had appeared in Ukraine, and judicial bodies unfortunately did not have the necessary instruments to deal with the situation. In the circumstances, it was up to the Committee to take note of the situation and help Ukraine tackle those problems and solve them as soon as possible.

11. Drawing the attention of the Ukrainian delegation and the members of the Committee to what was, in his opinion, one of the weak points in Ukraine's report, he said that the measures adopted by the Ukrainian Parliament with a view to implementing the Convention against Torture were totally unsatisfactory and the report did not refer to any decisions taken, article by article. It did refer to an improvement in conditions of detention, but offences committed by police officers, for example, were hardly mentioned at all, even though the Convention required country reports to include such information. The report also gave no specific examples of provisions to give effect to the Convention.

12. The second criticism which could be levelled at the authors of the report was that they did not go into enough detail on the status of the Convention in national legislation. Some provisions of the Convention were reflected in national legislation, but not all.

13. He asked how the text of the Convention was brought to the attention of the public and whether, for example, convicted prisoners and detainees were informed about it. Did the members of judicial bodies receive special training with regard to international human rights legislation? Had the Committee received communications from Ukrainian citizens? If not, that seemed to indicate that the public was not adequately informed of the existence of the Convention. He also asked whether the Penal Code gave a clear definition of torture, as required under the Convention.

14. Paragraph 7 of the report simply set forth principles and said nothing about the practical implementation of the Convention. It was, of course, commendable that the militia was required to respect the dignity of the individual, but facts and figures relating to the number of cases in which the militia had been found guilty of violence would be welcome, together with information on proceedings and penalties. Paragraph 9 referred to a list of cases in which human rights and freedoms could be restricted. It was essential that the Committee should have that list. With regard to paragraph 10, he asked what the maximum length of pre-trial detention was. He also wished to know at what stage the lawyer was brought in: was it, for example, when the charge was read out?

15. He asked whether there was an immigration act and whether ordinary criminals and military personnel found guilty of a crime were subject to the same rules and regulations. What happened to convicted prisoners who served their sentence in another State? Lastly, he requested confirmation that international standards were being fully applied in internal law.

16. He wished Ukraine every success in its efforts to eradicate the medieval scourge of torture once and for all.

17. Mr. EL IBRASHI (Alternate Country Rapporteur) endorsed the statement made by Mr. Khitrin and referred to the difficult circumstances in Ukraine, a new country that was introducing far-reaching changes in all areas. It was difficult, in such circumstances, to see what the Government's real intentions were. The direct consequence of the transition to a market economy was the priority being given to the economy, and that would inevitably have a knock-on effect on other areas. He asked the Ukrainian delegation what measures were being taken to incorporate the provisions of the Convention into internal law, taking each article of the Convention in turn. In particular, he wished to know whether there was a definition of torture. He requested information on the penalties applied when Government officials violated the Convention. In his opinion, more information on the measures taken for the training of such officials would also be helpful.

18. Taking the report of Ukraine paragraph by paragraph, he requested further information on the amendments which had been made to existing legislation and on law enforcement. He also asked for copies of the legislation mentioned in the report. He noted that only physical force was mentioned, not

psychological pressure. He was concerned about paragraph 8, which referred to "cases where the use of force cannot be avoided" and requested further information on it. With regard to the "exhaustive list of cases in which human rights and freedoms may be restricted" (para. 9), he asked what the legal basis for that list was. He thanked the Ukrainian delegation and said he was aware of the problems to which far-reaching changes to a system gave rise.

19. Mr. SORENSEN, endorsing the views expressed by Mr. Khitrin and Mr. El Ibrashi, drew particular attention to paragraph 15, which referred to a programme for bringing the conditions of custody of convicted persons into line with international standards. A meeting on that topic had recently been held in Russia under the auspices of the Council of Europe and had been attended by Ukraine.

20. Ukraine had existed as a State for less than one year and it had enormous problems to solve. In his opinion, it would be unfair to try to judge the results achieved on the basis of the report under consideration. It might be better to wait until the country was more mature before judging the human rights situation. The Committee might, for example, request that a new supplementary report should be submitted.

21. Mr. BEN AMMAR said he believed that the current circumstances in Ukraine made it impossible to judge the results achieved. Nevertheless, solid foundations were needed to establish a State subject to the rule of law. He welcomed the new Ukraine's approach of harmonizing legislation and, in the process, giving priority to the independence of the judiciary, since that was an essential prerequisite for ensuring respect for rights and freedoms.

22. It was necessary to guarantee the exercise of freedoms and, in particular, freedom of the press, which ensured that any abuses could be reported. It was just as essential to provide for a broad-based human rights teaching programme and he noted that paragraph 19 of the report referred only to the Ministry of the Interior, whereas many other bodies were involved, including the judiciary, the army and the health professions. He recalled that a stable State could be built only by ensuring full respect for human rights.

23. Mr. MIKHAILOV thanked the Ukrainian delegation for its very detailed introductory statement. He would nevertheless like to have some specific replies. The Committee had drawn up guidelines for the preparation of reports and found that Ukraine had not followed them in its report. It was surprising that there was no definition of torture in Ukraine, even though that omission was not unheard of in other countries. He regretted the fact that nothing was said about responsibilities and penalties for offences and requested more detailed information and figures. Although circumstances could be blamed for the brevity of the report, the delegation probably had figures from the Ministry of the Interior and the Ministry of Justice and he would like them to be provided.

24. He asked whether the Convention was applied directly in internal law and what machinery was provided for its application. Could the Convention be invoked directly before a court, for example? As there were only four

remaining charges for which the death penalty could be applied, whereas there were 40 in Russia, he asked whether, in the event of sabotage, there was no loss of life, the death penalty was still applicable. He also wished to know how soon an accused person was allowed to see his lawyer.

25. Although he was aware of the difficulties Ukraine now faced, he proposed that the Committee should request a supplementary report within a time-limit to be decided.

26. Mr. BURNS said he wished to ask, in greater detail, a question which had already been put by the Country Rapporteur with regard to the new Code of Criminal Procedure: how long did it take for a detainee to be brought before the judge? Was access to a lawyer possible at any time during the proceedings or was the person under arrest at some point denied contact with a lawyer? With regard to the rules governing arrest and detention, he asked whether the same rules applied to the ordinary police, the State security forces and the armed forces.

27. The CHAIRMAN said he agreed that Ukraine had submitted a very general and brief report, but it could hardly be blamed for doing so. However, it was almost impossible to make any judgement on the basis of the report. For example, it said nothing about article 3 or about articles 5 to 15 of the Convention. Ukraine was going through a period of transition and development which could lead to far-reaching changes, so that it was impossible to judge the human rights situation in general and that of torture in particular. All the same, he wished to know whether there were any cases of torture in Ukraine and, if so, what measures had been taken for the punishment of torture. He endorsed the idea put forward by Mr. Sorensen, Mr. Mikhailov and Mr. Ben Ammar that Ukraine should be requested to prepare a supplementary report. The Committee could also wait for the new periodic report, but the four year period was probably too long.

The meeting was suspended at 4.30 p.m. and resumed at 4.40 p.m.

28. Mr. BURTSHAK (Ukraine) thanked the Committee for its understanding and for taking account of the difficult situation in his country. Since the report was incomplete, Mr. Mikhailov had suggested that some of the ministries which had interesting information might be requested to submit it. Those were the ministries and competent departments that had been involved in the preparation of the report. To fill the gaps, he would try to answer the questions that had been asked.

29. One question had been whether the provisions of the Convention against Torture had to be included specifically in internal law. In Ukraine, the provisions of international conventions and treaties had force of law without having to be incorporated in the legislation, except, of course, in cases where implementation machinery had to be established. For example, the Convention against Torture provided for compensation to be paid to victims for injury or damage they had suffered. In that case, specific legislation had to be enacted, and that had been done, since specific provisions for compensation existed. Ukraine had adopted special legislation for the benefit of victims of political repression or, in other words, over half a million persons; the legislation applied not only to persons sentenced to prison or victims of acts

of repression by non-judicial bodies, but also to persons who had been deported. That was an extremely complex process. When the legislation on the victims of police repression had been adopted one year previously, attempts had been made to find balanced solutions by basing compensation on average wages for all the years of deprivation of liberty and then calculating what the amount would be over five years. Since inflation was now 1 per cent per day in Ukraine, which standard should be applied? Would a specific new Act have to be adopted?

30. The general principles embodied in international treaties had to be fully understood both by persons working in competent bodies and by citizens. The definition of torture given in the Convention against Torture might be used in national legislation. In practice, he could not give any specific examples of torture, since the types of ill-treatment inflicted in the past were no longer used, although the memory remained. Unfortunately, violence persisted. Recently, demonstrators had gathered outside the Supreme Soviet and the militia had intervened, leaving a number of persons injured. For cases where the police were called in, there should be legislation setting limits on the use of force and determining the personal responsibility of the persons involved.

31. Referring to the figures on proceedings instituted in the last three years against public officials and members of the police force, he said that legal action had been taken against 1,567 in 1990, 438 in 1991 and 1,002 in 1992. According to official statistics, in 1990, 1991 and the first nine months of 1992, 1 person had been sentenced for abuse of power, 5 for unlawful arrest and 30, 20 and 25, respectively, for the unlawful application of criminal law; 184 persons in 1990, 150 in 1991 and 163 in 1992 had been sentenced for exceeding the time-limit on detention; and 5 persons had been sentenced for unlawful detention in 1990, 6 in 1991 and another 5 in the first 9 months of 1992, while 3 persons in 1990 and 6 in 1991 had been sentenced for using violence during an investigation.

32. As could be seen, genuine efforts were being made to combat the use of violence in Ukraine. Of course, the legacy of the past was hard to shake off, people's behaviour was still very much influenced by it and it was possible that there were other cases of violence of which he was not aware. The situation was currently in a state of flux. Cases of law-breaking were made public and, under the influence of the press and public opinion, responsibility was established whenever possible.

33. Although Ukraine was not involved in any international conflict, it was sometimes the scene of serious social problems. Mr. Khitrin had rightly referred to the sharp increase in crime. For example, various types of racketeering had made their appearance and new legislative and practical measures would have to be adopted to deal with them.

34. With regard to the communication of supplementary information, he stressed that his country had had three different Governments in less than one year, each with its own programme. In such circumstances, a Government could not be expected to have time to adopt legislation aimed at providing solutions to the problems which had been mentioned. The Supreme Soviet had therefore

decided to establish a special institute for legislation that would be under its authority and responsible for drafting completely new legislation and putting order in a confused situation.

35. A question had been asked about the training of the staff of judicial departments. A Ukrainian academy was already in operation and training some 8,000 persons; in that connection, a special training institute for public officials was to be set up. In the past, the public service had often had unskilled staff. The aim now was to ensure that all Government departments had competent managerial staff. One new initiative was that, of the 200 teachers responsible for training, 40 would train psychologists, some of whom would be sent to work in penal establishments. Their training would include the study of international human rights instruments and the legislation on the implementation of the Convention against Torture, in particular. To make the texts of such instruments more accessible to the public, a compilation of human rights treaties had been published for the first time in Ukrainian and three conferences had been organized on human rights issues. Furthermore, a human rights commission set up under the Supreme Soviet was dealing with complaints and using radio and television to provide the additional information on legislation that had been requested. Of course, there was still a great deal to be done, but Ukraine had made considerable progress and, if those efforts continued, positive results could be expected.

36. The report referred to the establishment of a State subject to the rule of law. He was not entirely convinced that it was fully in place, but, at any rate, there was a State which, on the basis of popular tradition, was encouraging respect for the law, and that was a new approach because for years, the law had been completely detached from reality and daily life. It was necessary to be aware, however, that it would take at least one generation, if not two, to re-establish the tradition of the primacy of law. Current efforts would bear their fruits in the future.

37. It had been asked how many cases of restrictions on the exercise of human rights were provided for by law. It was true that, in the past, the provisions in force in that regard had been far from satisfactory and that, in any case, they had been kept secret. Transparency was now the rule and the standards to be applied were well-known. For example, it was known in which cases telephone listening devices could be used and when correspondence could be opened. That was a definite step forward and, in future, if there was no social unrest, such provisions would be made even more democratic.

38. Not long before, the maximum period of pre-trial detention could be extended by the procurator of the Union for up to one and half years. There again, the burden of the past was, unfortunately, making itself felt and the Office of the Procurator General of Ukraine insisted on keeping that possibility open. With regard to access to a defence counsel, the Penal Code provided that, once the detainee had been charged, he could meet with his lawyer. At present, however, that was still not the case.

39. The procedure for release was in keeping with the provisions of the International Covenant on Civil and Political Rights, as was the Citizenship Act, under which all citizens had a passport and were free to travel abroad.

40. Mr. El Ibrashi had said that Ukraine had been independent for a year, but that was not quite right. On 24 August 1991, the Independence Act had been voted on by the Supreme Soviet, but its entry into force had been subject to a referendum. It had taken place on 1 December 1991, which was thus the date of independence. In the brief period of time since then, moreover, there had been three successive Governments. In such circumstances, it was impossible to expect the very complex problems mentioned by Mr. El Ibrashi to have been solved. In particular, the new Codes to which he had referred did not yet exist. Amendments and changes had been made to particular provisions of the former Codes reflecting the point of view of deputies who had taken the initiative and of experts working with them. The new Codes would have to be universally applicable. Bills were under consideration and the Office of the Procurator General had already given his opinion on the future Codes, in particular with regard to work in penal establishments. They could, however, probably not be enacted until the second half of 1993.

41. Unfortunately, the rules applied with regard to extradition had not changed. It therefore seemed that the Constitution was not in keeping with the principles of international instruments, but he believed that appropriate provisions on extradition would be included in the next Constitution. In any event, that was the hope that had been expressed at two international conferences which had been held in Kiev under the auspices of a legal foundation financed by the Renewal Fund of the Republic of Ukraine and at which the current provisions on extradition had been criticized.

42. Further details had been requested on the implementation of the programme for the amendment of provisions governing the operation of penal establishments. The report stated that restrictive regimes for prisoners had been abolished. Restrictions on correspondence, detainees' foodstuffs, clothing parcels, etc. had thus been lifted. It was planned to authorize monthly meetings for prisoners, but that measures had not yet been implemented owing to the shortage of premises. There were also plans to build a reception centre where prisoners' relatives could stay in order to be able to meet with them.

43. The most important measure to be taken was the establishment of independent courts. There was still no act on the new courts, but, in fact, judges were more independent than in the past, since there was no longer any Government body above them holding them to account and forcing them to change their rulings in one way or another. In that connection as well, of course, the weight of the past was being felt, for the people's deputies thought that they could meddle in court cases and put pressure on the courts. Recently, a group of people's deputies had gone before the Supreme Soviet to propose that a conference of judges should be convened to look into the problems relating to respect for legislation on public worship. It had taken him a long time to convince them that they had to respect the independence of the judiciary and not intervene. The independence of the judiciary did not yet exist and some persons believed that they could use judges for their own ends. In order to ensure the primacy of the law, it would therefore be essential to change the behaviour of citizens and the idea they had of the judicial system. However, that would not happen over-night.

44. There was no doubt that independent judicial bodies were a guarantee against torture and confessions obtained by force. The idea of an act on the judiciary providing for the independence of judges was thus gaining ground. However, it was still impossible to know when such an act could be adopted. It had already been proposed that judges should be irremovable, since that would protect them from pressure exerted by those who had appointed them.

45. As Mr. Ben Ammar had emphasized, the medical profession, the army and the militia also played a decisive role in the exercise of human rights. Ukraine was in the process of setting up a new army which would focus primarily on defence and non-interference in the internal affairs of countries.

46. Mr. Mikhailov had said that he wanted a supplementary report to be prepared, but, apart from the specific information on changes which he had just reported, it would be extremely difficult to submit fresh information. The Committee should leave the young Ukrainian State enough time to find its feet and adopt its judiciary and its legislation. Mr. Mikhailov had also requested further information on crimes punishable by the death penalty under the Ukrainian Penal Code. It must be noted that it was the Soviet Code that had provided for capital punishment for the crime of murder. In all, 37 crimes had been punishable by the death penalty under that code. At present, the general section of the Ukrainian Code made four crimes punishable by the death penalty, including sabotage - namely, explosions, arson and other acts committed against the State with a view to massive losses of human life; forest and other fires and harm to the health of the population; damage to installations of major importance to the economy or national defence; and poisoning or epidemics caused for the same purpose. Those acts did not all necessarily endanger human life. In time of war, moreover, 15 crimes were punishable by the death penalty; they concerned only members of the military.

47. An individual could be held in pre-trial detention for three hours, but, if there were grounds for believing that he would be accused of a crime and it was necessary to hold him longer, he could be held for three days, provided that, during the first 24 hours, the procurator had been notified of his arrest and had made sure that it had been carried out in conformity with the law. The accused could have access to a lawyer after three days; that was the general rule, whether the person had been detained by the police, the army or the security forces.

48. He agreed that the report was not in keeping with the Committee's guidelines, but it still faithfully reflected Ukrainian reality and he had done his best to answer the questions that had been asked. In view of the complexity of the situation in his country, it would be very difficult to provide supplementary information. The next periodic report of Ukraine would definitely contain further details.

49. Mr. KHITRIN (Country Rapporteur) suggested that the Committee should discuss its conclusions and recommendations in a closed meeting before bringing them to the attention of the Ukrainian delegation.

50. It was so decided.

The public meeting rose at 5.20 p.m.